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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

Case No. 2:10-CR-00124-KJD-RJJ

12 v.

ORDER

13 DARRYL OWEN WALIZER,

14 Defendant.

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16 Presently before the Court is Defendant's Motion for District Judge to Reconsider Order
17 (#192). Also before the Court is Defendant's prior Motion for Turnover of Documents (#175).¹

18 First, Defendant claims to have newly discovered evidence that requires reconsideration of
19 the Court's order that Defendant's trial defense counsel did not have to respond to a request for a
20 report from Defendant's proposed expert. However, the evidence is neither authenticated nor new.
21 The alleged emails between the defense expert and a relative of Defendants are not authenticated in
22 any way. Therefore, they are inadmissible for purposes of this motion. Additionally, they are not
23 newly discovered evidence. Defendant filed his motion for an order compelling Raquel Lazo to reply
24 on February 12, 2016. The email correspondence occurred in February 2015. In order to meet the
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26 ¹The Court previously ordered (#190) the Government to produce documents for *in camera* inspection.

1 “newly discovered evidence” requirement within the meaning of Rules 60(b)(2) and 59, parties must
2 show the evidence: “(1) is truly-newly discovered; (2) could not have been discovered through due
3 diligence; and (3) is of such a material and controlling nature that it demands a probable change in
4 the outcome.” United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1130 n.45 (E.D. Cal.
5 2001); see also Coastal Transfer Co. v. Toyota Motor Sales, U.S.A., 833 F.2d 208, 211 (9th Cir.
6 1987). Failure to file documents in an original motion or opposition does not turn the late-filed
7 documents into newly discovered evidence. See School Dist. No. 1J., 5 F.3d at 1263. Defendant has
8 not met his burden in showing that the “evidence” is newly discovered.

9 Finally, the Court has reviewed the Government’s *in camera* submission. Having read the
10 fifty pages of chat transcripts and other documents, the Court finds that the information is either
11 duplicative of the transcripts in the underlying trial or not material to the issues in Plaintiff’s §2255
12 motion. Nothing in the chat transcripts could be construed as exculpatory in any fashion. Further, to
13 the extent that Defendant is hoping to find evidence that shows he was actually innocent, because he
14 was entrapped, there was no evidence in the documents provided *in camera* that would have
15 supported such a defense. Further, it’s hard to believe that a competent attorney would have pursued
16 an entrapment defense in this case considering Defendant’s criminal history. See United States v.
17 Thomas, 134 F.3d 975, 978 (9th Cir. 1998)(prosecution must prove beyond a reasonable doubt that
18 defendant was disposed to commit the criminal act prior to being approached by government agents).
19 Therefore, no further turnover of documents will be required of the Government.

20 Accordingly, IT IS HEREBY ORDERED that Defendant’s Motion for District Judge to
21 Reconsider Order (#192) is **DENIED**.

22 DATED this 18th day of April 2017.

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Kent J. Dawson
United States District Judge